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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,147	07/23/2003	Francis Koperda	A-9277 (191910-1062)	8272

7590 10/13/2004

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EXAMINER

CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,147

Applicant(s)

KOPERDA ET AL.

Examiner

Jason D Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/20/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101, which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-18 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-18 of prior U.S. Patent No. 6,230,203. This is a double patenting rejection.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 19-28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19, 20, 22, 23

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and 26-28 of copending Application No. 09/588,211. Although the conflicting claims are not identical, they are not patentably distinct from each other because they share the same claimed subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 19-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowcutt et al. ("Bowcutt"), USPN 6,308,328.

7. Regarding claim 19, Bowcutt discloses a method of providing statistics for billing users of data services provided over a cable television network comprising the steps of:
monitoring session duration of a link to a network access device and storing data related thereto [Bowcutt, col. 3, lines 2-28, col. 9, lines 17-65 and col. 19, line 63 – col. 20, line 3];

monitoring amount of data transferred to and from a network access device and storing data related thereto [Bowcutt, col. 3, lines 6-28 and col. 19, lines 5-15]; and

monitoring amount of data lost in the link and storing data related thereto, the statistics permitting a flexible billing structure [Bowcutt, col. 3, lines 44-55 and col. 19, lines 33-52].

8. Regarding claim 20, Bowcutt further discloses the step of monitoring and storing the start time of the session [Bowcutt, col.9, lines 17-65 and col. 19, line 63 – col. 20, line 3].

9. Regarding claim 21, Bowcutt further discloses the steps of subtracting the amount of lost data from the amount of transferred data to obtain an amount of actual data transferred and billing proportional to the amount of actual data transferred and session duration [Bowcutt, col. 3, lines 2-28 and col. 19, lines 53-62].

10. Regarding claim 22, Bowcutt further discloses the steps of recording the address of the network access device and of apparatus to which the network access device is linked during the session [Bowcutt, col. 6, lines 36-49].

11. Regarding claim 23, Bowcutt further discloses the step of providing a plurality of service tiers depending on maximum shared bandwidth or bit rate [Bowcutt, col. 2, lines 31-45 and col. 9, lines 17-65].

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12. Regarding claim 24, Bowcutt further discloses the flexible billing structure comprises a fee determined by amount of actual data communicated during a session [Bowcutt, col. 3, lines 44-55].

13. Regarding claim 25, Bowcutt further discloses the step of monitoring quality of service provided a subscriber determined by additionally monitoring jitter and delay [Bowcutt, col. 7, lines 14-60].

14. Regarding claim 26, Bowcutt further discloses the step of storing preauthorized level of service data for subscribers, an administration computer communicating the preauthorized level of service data to a link access controller for regulating service at the preauthorized level [Bowcutt, col. 8, lines 11-25].

15. Regarding claims 27 and 28, Bowcutt further discloses the step of receiving parametric statistical data for a session of a network access device at an administration computer, wherein the parametric statistical data comprises amount of data transferred and amount of data lost [Bowcutt, col. 3, lines 44-55 and col. 19, lines 5-52].

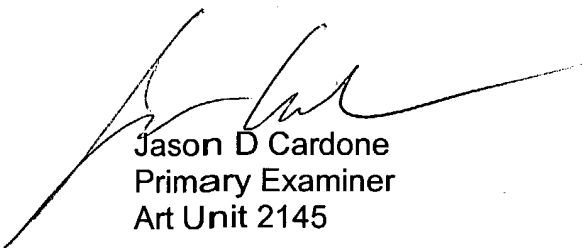
Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone
Primary Examiner
Art Unit 2145

October 7, 2004